Dispute Settlement Update
November 15, 2005

I. WTO

A. Proceedings in which the United States is a plaintiff

1. Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals (WT/DS171, 196)

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that have arisen as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations continued until April 16, 2002, when the two sides agreed to settle eight of the ten issues in the dispute. Argentina and the United States notified a settlement of these issues to the DSB on May 31, 2002. The United States reserved its rights with respect to the remaining issues, and the dispute remains in the consultation phase with respect to these issues.

2. Brazil—Measures on minimum import prices (WT/DS197)

The United States requested consultations on May 31, 2000, with Brazil regarding its customs valuation regime. U.S. exporters of textile products have reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the EU regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continues to monitor the situation.

3. Canada—Measures relating to exports of wheat and treatment of imported grain (WT/DS276)

On December 17, 2002, the United States requested consultations with Canada regarding trade in wheat. The United States challenged the wheat trading practices of the Canadian Wheat Board (CWB) as inconsistent with WTO disciplines governing the conduct of state-trading enterprises.

The United States also challenged as unfair and burdensome Canada's requirements to treat imported grain differently than Canadian grain in the Canadian grain handling system, along with Canada's discriminatory policy that affects U.S. grain access to Canada's rail transportation system. Consultations were held January 31, 2003 but failed to resolve the dispute.

The United States requested the establishment of a panel on March 6, 2003. The DSB established a panel on March 31, 2003. The Director General composed the panel as follows: Ms. Claudia Orozco, Chair, and Mr. Alan Matthews and Mr. Hanspeter Tschaeni, Members. Following a preliminary procedural ruling, the DSB established a second panel on July 11, 2003, with the same panelists and the same schedule. In its report circulated on April 6, 2004, the panel found that Canada's grain handling system and rail transportation system discriminate against imported grain in violation of national treatment principles. However, the panel found that the United States failed to establish a claim that Canada violates WTO disciplines governing the conduct of state trading enterprises. The United States appealed the panel's findings related to state trading enterprises. On August 30, 2004, the Appellate Body upheld the panel's findings on state trading enterprises. Canada did not appeal the panel's findings that Canada's grain handling and transportation systems discriminate against U.S. grain. The DSB adopted the panel and Appellate Body reports on September 27, 2004. Canada and the United States subsequently agreed to a reasonable period of time for implementation of the DSB's recommendations and rulings that ended on August 1, 2005. Prior to the end of the reasonable period of time, Canada announced that it had remedied the discriminatory aspects of its grain handling and rail transportation systems.

4. China—Value-added tax on integrated circuits (WT/DS309)

On March 18, 2004, the United States requested consultations with China regarding its value-added tax ("VAT") on integrated circuits ("ICs"). While China provides for a 17 percent VAT on ICs, enterprises in China are entitled to a partial refund of the VAT on ICs that they have produced. Moreover, China allows for a partial refund of the VAT for domestically-designed ICs that, because of technological limitations, are manufactured outside of China. As a result of the rebates, China appears to be according less favorable treatment to imported ICs than it accords to domestic ICs. China also appears to be providing for less favorable treatment of imports from one WTO Member than another and discriminating against services and service suppliers of other Members. The United States considers these measures to be inconsistent with China's obligations under Articles I and III of the GATT 1994, the Protocol on the Accession of the People's Republic of China, and Article XVII of the GATS. Consultations were held on April 27, 2004 in Geneva, and additional bilateral meetings were held in Washington and Beijing. On July 14, 2004, the United States and China notified the WTO of their agreement to resolve the dispute. Effective immediately, China no longer certified any new IC products or manufacturers for eligibility for VAT refunds and China no longer offered VAT refunds that favor ICs designed in China, and by April 1, 2005,China stopped providing VAT refunds on Chinese-produced ICs to current beneficiaries. Based on these developments, the United States and China notified the DSB on October 5, 2005 that they had reached a mutually satisfactory solution.

5. EC—Measures concerning meat and meat products (hormones) (WT/DS26, 48)

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. The panel found that the EU ban is inconsistent with the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), and that the ban is not based on science, a risk assessment, or relevant international standards. Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet. On November 3, 2003, the EU notified the WTO of its plans to make permanent the ban on one hormone, oestradiol. As discussed below (DS320), on November 8, 2004, the European Communities requested consultations and a panel with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the *EC – Hormones* dispute.

6. EC—Protection of trademarks and geographical indications for agricultural products and foodstuffs (WT/DS174)

The United States first requested consultations regarding this matter on June 1, 1999, and, on April 4, 2003, requested consultations on the additional issue of the EU's national treatment obligations under the GATT 1994. Australia also requested consultations with respect to this measure. When consultations failed to resolve the dispute, the United States requested the establishment of a panel on August 18, 2003. The DSB established a panel on October 2, 2003, to consider the complaints of the United States and Australia. On February 23, 2004, the Director General composed the panel as follows: Mr. Miguel Rodriguez Mendoza, Chair, and

Mr. Seung Wha Chang and Mr. Peter Kam-fai Cheung, Members. On April 20, 2005, the DSB adopted the panel report, which found that the EC's regulation on food-related geographical indications (GIs), EC Regulation 2081/92, is inconsistent with the EC's obligations under the TRIPS Agreement and the GATT 1994. This finding results from the long-standing U.S. complaint that the EC GI system discriminates against foreign products and persons – notably by requiring that EC trading partners adopt an "EC-style" system of GI protection – and provides insufficient protections to trademark owners. The WTO panel agreed that the EC's GI regulation impermissibly discriminates against non-EC products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. The panel recommended that the EC amend its GI regulation to come into compliance with its WTO obligations. The EC, the United States, and Australia (which filed a parallel case) agreed that the EC would have until April 3, 2006, to implement the recommendations and rulings.

7. EC—Provisional safeguard measures on imports of certain steel products (WT/DS260)

On May 30, 2002, the United States filed a consultation request with respect to the EU's provisional safeguard measures against certain steel products, imposed effective on March 29, 2002. These measures appear to be inconsistent with the EC's obligations under the provisions of the GATT 1994 and of the WTO Agreement on Safeguards, and, in particular, Article XIX of the GATT 1994 and Articles 2, 3, 4, 6, and 12 of the Agreement on Safeguards. These provisions provide, inter alia, that a provisional safeguard measure may only be applied in critical circumstances where delay would cause damage difficult to repair, and only pursuant to a preliminary determination that there is clear evidence that increased imports have caused or threaten to cause serious injury. One round of consultations was held on June 27, 2002, and a second round was held on July 24, 2002. The United States requested the establishment of a panel on August 19, 2002, and the DSB established a panel on September 16, 2002.

8. EC—Measures affecting the approval and marketing of biotech products (WT/DS291)

On May 13, 2003, the United States filed a consultation request with respect to the EU's moratorium on all new biotech approvals, and bans of six member states (Austria, France, Germany, Greece, Italy and Luxembourg) on imports of certain biotech products previously approved by the EU. The moratorium is not supported by scientific evidence, and the EU's refusal even to consider any biotech applications for final approval constitutes "undue delay." The national import bans of previously EU-approved products appear not to be based on sufficient scientific evidence. Consultations were held June 19, 2003. The United States requested the establishment of a panel on August 7, 2003, and the DSB established a panel on August 29, 2003. On March 4, 2003, the Director General composed the panel as follows: Mr. Christian Häberli, Chairman, and Mr. Mohan Kumar and Mr. Akio Shimizu, Members.

9. Egypt—Apparel Tariffs (WT/DS305)

On December 23, 2003, the United States requested consultations with Egypt regarding the duties that Egypt applies to certain apparel and textile imports. During the Uruguay Round, Egypt agreed to bind its duties on these imports (classified under HS Chapters 61, 62 and 63) at rates of less than 50 percent (*ad valorem*) in 2003 and thereafter. The United States believed the duties that Egypt actually applied, on a "per article" basis, greatly exceeded Egypt's bound rates of duty. In January and September 2004, Egypt issued decrees applying ad valorem rates to these imports and setting the duty rates within Egypt's tariff bindings. Based on these developments, Egypt and the United States agreed in May 2005 that a mutually satisfactory solution had been reached to the matter raised by the United States.

10. Japan—Measures affecting the importation of apples (WT/DS245)

On March 1, 2002, the United States requested consultations with Japan regarding Japan's quarantine restrictions on U.S. apples imported into Japan to protect against introduction of fire blight (*Erwinia amylovora*). These restrictions included, *inter alia*, the prohibition of imported apples from orchards in which any fire blight is detected, the requirement that export orchards be inspected three times yearly for the presence of fire blight, the disqualification of any orchard from exporting to Japan should fire blight be detected within a 500 meter buffer zone surrounding such orchard, and a post-harvest treatment of exported apples with chlorine. The United States considered these measures to be inconsistent with Japan's obligations under the GATT 1994, the SPS Agreement, and the Agreement on Agriculture. Consultations were held on April 18, 2002, but failed to resolve the matter. The DSB established a panel on June 3, 2002. The Director General composed the panel as follows: Mr. Michael Cartland, Chairman, and Mr. Christian Haeberli and Ms. Kathy-Ann Brown, Members. In its report issued on July 15, 2003, the panel agreed with the United States that Japan's fire blight measures on U.S. apples are inconsistent with Japan's WTO obligations. In particular, the panel found that: (1) Japan's measures are maintained without sufficient scientific evidence, inconsistent with Article 2.2 of the SPS Agreement; (2) Japan's measures cannot be provisionally maintained under Article 5.7 of the SPS Agreement (an exception to the obligation under Article 2.2); and (3) Japan's measures are not based on a risk assessment and so are inconsistent with Article 5.1 of the SPS Agreement. Japan appealed the panel's report on August 28, 2003. The Appellate Body issued its report on November 26, 2003, upholding the panel's findings. The DSB adopted the panel and Appellate Body reports on December 10, 2003. Japan notified its intention to implement the recommendations and rulings of the DSB on January 9, 2004. Japan and the United States agreed that the reasonable period of time for implementation would expire on June 30, 2004.

On expiration of the reasonable period of time, Japan proposed revised measures which made limited changes to its existing measures, and which continued to include an orchard inspection and a buffer zone. On July 19, 2004, the United States requested the establishment of a DSU Article 21.5 compliance panel to evaluate Japan's revised measures. Simultaneously, the United States requested authorization to suspend concessions or other obligations under DSU Article 22.2 in an amount equal to $143.4 million. Japan objected to this amount on July 29, 2004, referring the matter to arbitration. The parties suspended the arbitration pending completion of

the compliance proceeding. The compliance panel was established on July 30, 2004. The original three panelists agreed to serve on the compliance panel. The panel issued its final report on June 23, 2005, finding Japan's revised measure in breach of Articles 2.2, 5.1 and 5.6 of the SPS Agreement. The DSB adopted the compliance panel report on July 20, 2005.

On August 25, 2005, Japan issued revised regulations eliminating its unnecessary and unjustified measures on U.S. apples, including among other things orchard inspections, buffer zones, and the surface disinfection of apple fruit. On August 30, 2005, the United States and Japan informed the DSB that they had reached a mutually agreed solution to the dispute. Accordingly, the United States withdrew its Article 22.2 request to suspend concessions and other obligations to Japan, and Japan withdrew its Article 22.6 request for arbitration regarding the proposed level of suspension of concessions.

11. Mexico—Measures affecting telecommunications services (WT/DS204)

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services ("GATS") with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico.

These consultations, which were held on October 10, 2000, provided helpful clarifications but did not resolve the dispute. Therefore, on November 10, 2000, the United States filed a request for the establishment of a panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001. At that time, the United States decided not to pursue its panel request further given progress subsequently achieved in Mexico's domestic telecommunications market. For instance, Mexico reduced domestic interconnection rates and introduced measures to regulate Telmex as a dominant carrier. However, Mexico failed to take steps to address U.S. concerns regarding the anti-competitive nature of its international telecommunications regime, including the exorbitant interconnection rates that Telmex charged U.S. operators to complete calls into Mexico. Therefore, on February 13, 2002, the United States filed a new request for a panel to examine these unresolved issues. The panel was established on April 17, 2002. On August 26, 2002, the Director General composed the panel as follows: Mr. Ernst-Ulrich Petersmann, Chairman; Mr. Raymond Tam and Mr. Björn Wellenius, Members.

On April 2, 2004, the panel released its final report, siding with the United States on most of the major claims in this dispute. Specifically, the panel found that: (1) Mexico breached its commitment to ensure that U.S. carriers can connect their international calls to Mexico's major

supplier, Telmex, at cost-based rates; (2) Mexico breached its obligation to maintain appropriate measures to prevent its dominant carrier from engaging in anti-competitive practices, by granting Telmex the exclusive authority to negotiate the rate that all Mexican carriers charge U.S. companies to complete calls originating in the United States; and (3) Mexico breached its obligations to ensure that U.S. carriers operating within Mexico can lease lines from Mexican carriers (and thereby provide services on a resale basis). The panel concluded, however, that Mexico may prohibit U.S. carriers from using leased lines in Mexico to complete calls originating in the United States.

Mexico did not appeal the panel report, which the DSB adopted on June 1, 2004. At that DSB meeting, Mexico and the United States informed the DSB that they had reached agreement on the steps required to implement the panel report. Mexico and the United States subsequently agreed that the reasonable period of time for implementation of the DSB's recommendations and rulings would expire on July 1, 2005. In August 2004, Mexico modified its international telecommunications rules to allow the competitive negotiation of international interconnection rates, and in July 2005 Mexico enacted new rules to allow the resale of international and long distance services. Based on these developments, the United States and Mexico informed the DSB on August 31, 2005 that Mexico had taken the steps required under their agreement.

12. Mexico—Definitive antidumping measures on beef and rice (WT/DS295)

On June 16, 2003, the United States requested consultations on Mexico's antidumping measures on rice and beef, as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The specific U.S. concerns include: (1) Mexico's injury investigations in the two antidumping determinations; (2) Mexico's failure to terminate the rice investigation after a negative preliminary injury determination and its decision to include firms that were not dumping in the coverage of the antidumping measures; (3) Mexico's improper application of the "facts available"; (4) Mexico's improper calculation of the antidumping rate applied to non-investigated exporters; (5) Mexico's improper limitation of the antidumping rates it calculated in the beef investigation; (6) Mexico's refusal to conduct reviews of exporters' antidumping rates; and (7) Mexico's insufficient public determinations. The United States also challenged five provisions of Mexico's Foreign Trade Act. The United States alleges violations of various provisions of the Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the GATT 1994. Consultations were held July 31 and August 1, 2003. The United States requested the establishment of a panel on the measure on rice on September 19, 2003, and the DSB established a panel on November 7, 2003. On February 13, 2004, the Director General composed the panel as follows: Mr. Crawford Falconer, Chair, and Ms. Marta Calmon Lemme and Ms. Enie Neri De Ross, Members. Consultations on the measure on beef continue.

On June 6, 2005, the Panel issued its final report, siding with the United States on all of the major claims in dispute. Specifically, the Panel found that Mexico improperly (1) based its injury analysis on outdated information and failed to examine half of the injury data it collected;

(2) applied its antidumping measure to two U.S. exporters that were not dumping; (3) applied an adverse "facts available" margin to a U.S. exporter that had no shipments during the period of investigation; and (4) applied "facts available" margins to U.S. exporters and producers that it did not even investigate. The Panel also found that six provisions of Mexico's antidumping and countervailing duty law are inconsistent "as such" with the WTO Antidumping Agreement and the WTO Agreement on Subsidies and Countervailing Measures.

On July 20, 2005, Mexico appealed the findings in the panel report. The Appellate Body is scheduled to issue its final report no later than November 29, 2005.

13. Mexico—Tax measures on soft drinks and other beverages (WT/DS308)

On March 16, 2004, the United States requested consultations with Mexico regarding its tax measures on soft drinks and other beverages that use any sweetener other than cane sugar. These measures apply a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar. Soft drinks and other beverages sweetened with cane sugar are exempt from the tax. Mexico's tax measures also include a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment, and distribution of soft drinks and other beverages that use any sweetener other than cane sugar. Mexico's tax measures work *inter alia* to restrict U.S. exports to Mexico of high fructose corn syrup, a corn-based sweetener that is directly competitive and substitutable with cane sugar. The United States considers these measures to be inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994. Consultations were held on May 13, 2004, but they failed to resolve the dispute.

The United States requested the establishment of a panel on June 10, 2004, and the DSB established a panel on July 6, 2004. On August 18, 2004, the parties agreed to the composition of the panel as follows: Mr. Ronald Saborío Soto, Chair, and Mr. Edmond McGovern and Mr. David Walker, Members. On October 7, 2005, the panel circulated its report. The panel concluded that Mexico's beverage tax is inconsistent with Articles III:2 and III:4 of the General Agreement on Tariffs and Trade 1994 and rejected Mexico's defense that the tax is justified as necessary to secure U.S. compliance with the North American Free Trade Agreement. The panel found that the beverage tax discriminates against U.S. sweeteners, including high-fructose corn syrup (HFCS), by subjecting beverages made with any sweetener other than cane sugar to a 20 percent tax whereas beverages made with cane sugar are tax-exempt.

14. Venezuela—Import licensing measures on certain agricultural products (WT/DS275)

On November 7, 2002, the United States requested consultations with Venezuela regarding import licensing measures on certain agricultural products. Venezuela has established import licensing and permit requirements for numerous agricultural products that appear to establish a discretionary import licensing regime, and that fail to establish a transparent and predictable system for issuing import licenses. These measures severely restrict and distort trade in these

goods, and appear to be in violation of provisions of the Agreement on Agriculture, the GATT 1994, and the Import Licensing Agreement. Consultations were held November 26, 2002.

15. European Communities—Selected customs matters (WT/DS315)

On September 21, 2004, the United States requested consultations with the EC with respect to (1) lack of uniformity in the administration by EC member States of EC customs laws and regulations and (2) lack of an EC forum for prompt review and correction of member State customs determinations. On September 29, 2004, the EC accepted the U.S. request for consultations, and consultations were subsequently held on November 16, 2004. The panel was established on March 21, 2005. On May 27, 2005, the Director General composed the panel as follows: Mr. Nacer Benjelloun-Touimi, Chair, and Mr. Mateo Diego-Fernandez and Mr. Hanspeter Tschani, Members.

16. European Communities—Subsidies on large civil aircraft (WT/DS316)

On October 6, 2004, the United States requested consultations with the EC, as well as with Germany, France, the United Kingdom, and Spain, with respect to subsidies provided to Airbus, a manufacturer of large civil aircraft. The United States alleged that such subsidies violated various provisions of the SCM Agreement, as well as Article XVI:1 of the GATT. Consultations were held on November 4, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings.

The United States and the EU were unable to reach an agreement within the 90-day time frame. Therefore, the United States filed a request for a panel on May 31, 2005. The Panel was established on July 20, 2005. The U.S. request challenges several types of EU subsidies that appear to be prohibited, or actionable, or both. On February 13, 2004, the Deputy Director General composed the panel as follows: Mr. Carlos Pérez del Castillo, Chair, and Mr. John Adank and Mr. Thinus Jacobsz, Members.

17. Turkey— Measures affecting the importation of rice (WT/DS334)

On November 2, 2005, the United States requested consultations regarding Turkey's import licensing system and domestic purchase requirement with respect to the importation of rice. By conditioning the issuance of import licenses to import at preferential tariff levels upon the purchase of domestic rice, not permitting imports at the bound rate, and implementing a de facto ban on rice imports during the Turkish rice harvest, Turkey appears to be acting inconsistently with several WTO agreements, including the Agreement on Trade-Related Investment Measures (TRIMS), the General Agreement on Tariffs and Trade 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures.

B. Proceedings in which the United States is a defendant

1. United States—Tax treatment for "foreign sales corporations" ("FSC") (WT/DS108)

The EU challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU 's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed legislation that repealed and replaced the FSC provisions, but the EU claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

In anticipation of a dispute over compliance, the United States and EU reached agreement in September 2000 on the procedures to review U.S. compliance with the WTO recommendations and rulings. Pursuant to a request approved by the WTO, the deadline for U.S. compliance was changed from October 1, 2000, as recommended by the panel, to November 1, 2000. The procedural agreement also outlined certain procedural steps to be taken after passage of US legislation to replace the FSC. The essential feature of the agreement provided for sequencing of WTO procedures as follows: (1) a panel would determine the WTO-consistency of FSC replacement legislation (the parties retained the right to appeal); (2) only after the appeal process was exhausted would arbitration over the appropriate level of retaliation be conducted if the replacement legislation was found WTO-inconsistent. Pursuant to the procedural agreement, on November 17, the EU requested authority to impose countermeasures and suspend concessions in the amount of $4.043 billion. On November 27, the United States objected to this amount, thereby referring the matter to arbitration, which was then suspended pending a review of the legislation's WTO-consistency. On December 7, the EU requested establishment of a panel to review the legislation, and the panel was reestablished for this purpose on December 20, 2000. In a report circulated on August 20, 2001, the panel found that the FSC Repeal and

Extraterritorial Income Exclusion Act of 2000 (ETI Act) does not bring the United States into conformity with its WTO obligations. The United States appealed the panel ruling on October 15, 2001. On January 14, 2001, the Appellate Body affirmed the findings of the panel. On January 29, 2002, the panel and Appellate Body reports were adopted, and the suspended arbitration to determine the amount of concessions was reactivated, with the original panelists serving as the arbitration panel pursuant to the procedural agreement. The arbitration panel circulated its report on August 30, 2002, and found that the EU was entitled to impose trade sanctions in the amount of $4.043 billion. On May 7, 2003, the DSB granted the EC authorization to suspend concessions consistent with the decision of the arbitrator. On December 8, 2003, the Council of the European Union adopted Council Regulation (EC) No. 2193/2003, which provided for the graduated imposition of sanctions. These sanctions took effect on March 1, 2004.

On October 22, 2004, the President signed the American Jobs Creation Act of 2004 (AJCA). The AJCA repealed the FSC/ETI regime and, consistent with standard legislative practice regarding major tax legislation, contained a transition provision and a "grandfather" provision for pre-existing binding contracts. On November 5, 2004, the EU requested consultations regarding the transition and grandfather provisions. Consultations took place on January 11, 2005. On January 31, 2005, the EU published a regulation that suspended the sanctions with effect from January 1, 2005. The EU requested establishment of a panel on January 13, 2005, and the DSB established a panel on February 17. On May 2, the Director-General selected Mr. Germain Denis to replace Mr. Crawford Falconer as chairman, Mr. Falconer having earlier indicated that he was no longer able to serve on the panel. On September 30, 2005, the panel issued its report, finding that the AJCA maintains prohibited FSC and ETI subsidies through its transition and grandfathering provisions, and that the United States has therefore not fully brought its measures into conformity with its obligations under the relevant covered agreements. The United States appealed the report on November 14, 2005.

2. United States—Section 110(5) of U.S. Copyright Act (WT/DS160)

As amended in 1998 by the Fairness in Music Licensing Act, Section 110(5) of the U.S. Copyright Act exempts certain retail and restaurant establishments that play radio or television music from paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The panel issued its final report on June 15, 2000, and found that one of the two exemptions provided by Section 110(5) is inconsistent with the United States' WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to

serve as arbitrator. He determined that the reasonable period of time for implementation would expire on July 27, 2001. On July 24, the DSB approved a U.S. proposal to extend the reasonable period of time for implementation until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the EU requested arbitration to determine the level of nullification or impairment of benefits accruing to the EU as a result of Section 110(5)(B). The Director General composed the arbitration panel as follows: Mr. Ian F. Sheppard, Chair; Ms. Margaret Liang and Mr. David Vivas-Eugui, Members. In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case is $1.1 million.

On January 7, 2002, the EU requested authorization to suspend certain WTO obligations because the United States had not implemented the recommendations of the DSB. The United States objected to the request on January 17, 2002, and the matter was referred to arbitration. The parties agreed that the arbitration should be carried out by the same individuals that served in the earlier arbitration proceeding in the case. On February 27, 2002, the panel suspended the arbitration at the joint request of the United States and the EU, in light of ongoing efforts to resolve the issue.

On June 23, 2003, the United States and the EU notified to the WTO a mutually satisfactory temporary arrangement regarding the dispute. Pursuant to this arrangement, the United States made a lump-sum payment of $3.3 million to the EU, to a fund established to finance activities of general interest to music copyright holders, in particular awareness-raising campaigns at the national and international level and activities to combat piracy in the digital network. The temporary arrangement covered a three-year period, which ended on December 21, 2004.

3. United States—Section 211 Omnibus Appropriations Act of 1998 (WT/DS176)

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questions the consistency of Section 211 with the TRIPS Agreement, and it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU the Director General composed the panel on October 26, 2000, as follows: Mr. Wade Armstrong, Chairman; Mr. François Dessemontet and Mr. Armand de Mestral, Members. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed the panel report on October 4, 2001. The Appellate Body issued its report on January 2, 2002. The Appellate Body reversed the panel's one finding against the United States, and upheld the panel's favorable findings that WTO members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section

211 might breach national treatment and most favored nation obligations of the TRIPS Agreement. The Appellate Body and panel reports were adopted on February 1, 2002, and the United States informed the DSB of its intention to implement the recommendations and rulings. The reasonable period of time for implementation ended on June 30, 2005.

4. United States—Antidumping measures on certain hot-rolled steel products from Japan (WT/DS184)

Japan alleged that the preliminary and final determinations of the Department of Commerce and the USITC in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 1999, the Director General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that particular aspects of the antidumping duty calculation were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. On September 10, 2001, at a meeting of the DSB, the United States stated its intention to implement the recommendations and rulings of the DSB in a manner that respects U.S. WTO obligations, and that it would need a reasonable period of time in which to do so. The United States and Japan were unable to reach agreement on a reasonable period of time for compliance, and on November 20, 2001, Japan referred the question to arbitration. By mutual agreement of the parties, Mr. Florentino P. Feliciano was appointed to serve as arbitrator. On February 19, 2002, he determined that the reasonable period of time for implementation will expire on November 23, 2002. The United States implemented the recommendations and rulings of the DSB with respect to the particular investigations at issue prior to November 23, 2003. With respect to the outstanding implementation issue, the reasonable period of time ended on July 31, 2005.

5. United States—Countervailing duty measures concerning certain products from the European Communities (WT/DS212)

On November 13, 2000, the EU requested WTO dispute settlement consultations concerning determinations made in various U.S. countervailing duty (CVD) proceedings covering imports from member states of the EU, all such determinations involving the Department of Commerce's "change in ownership" (or "privatization") methodology. Previously, the EU had successfully challenged Commerce's methodology in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. Eventually, the EU requested the establishment of a panel with respect to determinations in 12 CVD determinations involving imported steel products from

EU member states. The EU's challenged the continued application of the methodology at issue in the UK leaded steel products case, as well as the new methodology devised by Commerce to replace it. A panel was established on September 10, 2001, and at the request of the EU the Director General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members.
In its final report, issued July 31, 2002, the panel found both the old and new Commerce privatization methodologies to be inconsistent with the WTO Subsidies Agreement. In addition, the panel found section 771(5)(F) of the Tariff Act of 1930 – the "privatization" provision in the CVD statute – to be WTO-inconsistent based on its conclusion that the provision precludes Commerce from acting in a WTO-consistent manner. The United States appealed the report on September 9, 2002. The Appellate Body issued its report on December 9, 2002. The Appellate Body affirmed the panel's finding that Commerce's methodology is inconsistent with the Subsidies Agreement, but disagreed with some of the panel's reasoning. In particular, the Appellate Body disagreed with the panel that an arm's length sale of a government-owned firm for fair market value always extinguishes prior subsidies. Instead, according to the Appellate Body, such a transaction creates merely a rebuttable presumption that prior subsidies are extinguished.

The DSB adopted the panel and Appellate Body reports on January 8, 2003. The United States stated its intention to implement the DSB recommendations and rulings on January 27, 2003. On April 10, 2003, the EC and the United States agreed that the reasonable period of time for implementation will expire on November 8, 2003. Commerce modified its methodology for analyzing a privatization in the context of the CVD law, and issued revised determinations under section 129 of the Uruguay Round Agreements Act, revoking two CVD orders in whole and one CVD order in part, and, in the case of five CVD orders, revising the cash deposit rates for certain companies. The United States stated that it had complied with the DSB recommendations and rulings at a DSB meeting on November 7, 2003.

On March 17, 2004, the EU requested consultations regarding the Department of Commerce's new change of ownership methodology. The EU contends that the Department countervails the entire amount of unamortized subsidies even if the price paid for the acquired firm was only $1 less than the fair market value. With respect to the Department of Commerce's revised determinations, the EU complains about the three sunset reviews in which the Department declined to address the privatization transactions in question on what essentially were "judicial economy" grounds. With respect to a fourth sunset review, the EU challenges the Department's analysis of the sale of shares to employees of the company in question. Consultations took place on May 24, 2004. A panel was established on September 27, 2004. The original three panelists agreed to serve on the compliance panel.

On August 17, 2005, the panel circulated its report. With respect to one determination, the panel did not find that Commerce's application of the privatization methodology was inconsistent with U.S. WTO obligations. The panel did find that Commerce should have applied the privatization methodology in two other determinations, where Commerce simply assumed the benefit of the

subsidy was extinguished by the privatization; in addition, the panel found that Commerce should have taken into account new record evidence presented during the redetermination proceeding. The panel also found that the USITC was not obliged to redo its sunset determination on likelihood of injury.

6. United States—Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") (WT/DS217, 234)

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The Director General composed the panel as follows: Mr. Luzius Wasescha, Chair, and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members. The panel's final report, circulated on September 16, 2002, found that the CDSOA is an impermissible action against dumping and subsidies under the WTO Antidumping and Subsidies Agreements, respectively. It also found that the CDSOA violates the standing provisions of these agreements. The United States appealed the panel's report on October 1, 2002. The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At that meeting, the United States stated its intention to implement the DSB recommendations and rulings. On March 14, 2003, the complaining parties requested arbitration to determine a reasonable period of time for implementation. On June 13, 2003, the arbitrator determined that this period would end on December 27, 2003. On June 19, 2003, legislation to bring the Continued Dumping and Subsidy Offset Act into conformity with U.S. obligations under the AD Agreement, the SCM Agreement and the GATT of 1994 was introduced in the U.S. Senate (S. 1299).

On January 15, 2004, eight complaining parties (Brazil, Canada, Chile, EU, India, Japan, Korea, and Mexico) requested WTO authorization to retaliate. The remaining three complaining parties (Australia, Indonesia and Thailand) agreed to extend to December 27, 2004, the period of time in which the United States has to comply with the WTO rulings and recommendations in this dispute. On January 23, 2004, the United States objected to the requests from the eight complaining parties to retaliate, thereby referring the matter to arbitration. On August 31, 2004, the Arbitrators issued their awards in each of the eight arbitrations. They determined that each complaining party could retaliate, on a yearly basis, covering the total value of trade not exceeding, in U.S. dollars, the amount resulting from the following equation: amount of

disbursements under CDSOA for the most recent year for which data are available relating to antidumping or countervailing duties paid on imports from each party at that time, as published by the U.S. authorities, multiplied by 0.72.

Based on requests from Brazil, the EU, India, Japan, Korea, Canada, and Mexico, on November 26, 2004, the DSB granted these Members authorization to suspend concessions or other obligations, as provided in DSU Article 22.7 and in the Decisions of the Arbitrators. The DSB granted Chile authorization to suspend concessions or other obligations on December 17, 2004.

On May 1, 2005, Canada and the EU began imposing additional duties of 15 percent on a list of products from the United States. On August 18, 2005, Mexico began imposing additional duties ranging from nine to 30 percent on a list of U.S. products. On September 1, 2005, Japan began imposing additional duties of 15 percent on a list of U.S. products.

7. United States—Countervailing duties on certain carbon steel products from Brazil (WT/DS218)

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel products from Brazil, alleging that the Department of Commerce's "change in ownership" (or "privatization") methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the UK, violates the Subsidies Agreement in this situation as well. Consultations were held on January 17, 2001.

8. United States—Antidumping duties on imports of seamless pipe from Italy (WT/DS225)

On February 5, 2001, the EU requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by the Department of Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The EU alleges that these measures violate the WTO Antidumping Agreement. Consultations were held on March 21, 2001.

9. United States—Certain measures regarding antidumping methodology (WT/DS239)

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by the U.S. Department of Commerce in conducting reviews of antidumping orders, and the practice of "zeroing" in conducting investigations and reviews. Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001.

10. United States—Final countervailing duty determination with respect to certain softwood lumber from Canada (WT/DS257)

On May 3, 2002, Canada requested consultations with the United States on the U.S. Department of Commerce's final countervailing duty determination concerning certain softwood lumber from Canada. Among other things, Canada challenged the evidence upon which the investigation was initiated and claimed that the Commerce Department incorrectly determined that the provision of low-cost timber to lumber companies was a subsidy, incorrectly measured the amount of subsidy, and failed to conduct its investigation properly. Consultations were held on June 18, 2002, and a panel was established at Canada's request on October 1, 2002. The panel was composed of Mr. Elbio Rosselli, Chair, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members.

In a report circulated on August 29, 2003, the panel found that the United States acted consistently with the SCM Agreement and GATT 1994 in determining that the programs at issue provided a financial contribution and that those programs were "specific" within the meaning of the SCM Agreement. It also found, however, that the United States had acted inconsistently with the SCM Agreement when it rejected private timber prices in Canada as the benchmark to determine whether – and to what extent – Canada was subsidizing lumber companies by providing low-cost timber. The Commerce Department had used U.S. prices as the basis for the benchmark, rejecting Canadian private prices because they were distorted by the government's dominance in the timber market. The panel also found that the United States had improperly failed to conduct a "pass-through" analysis to determine whether subsidies granted to one producer were passed through to other producers. The United States appealed these issues to the WTO Appellate Body on October 21, 2003, and Canada appealed the "financial contribution" issue on November 5, 2003.

On January 19, 2004, the WTO Appellate Body issued a report finding in favor of the United States in all key respects. The Appellate Body reversed the panel's unfavorable finding with respect to the rejection of Canadian prices as a benchmark; upheld the panel's favorable finding that the provincial governments' provision of low-cost timber to lumber producers constituted a "financial contribution" under the SCM Agreement; and reversed the panel's unfavorable finding that the Commerce Department should have conducted a "pass-through" analysis to determine whether subsidies granted to one lumber company were passed through to other lumber companies through the sale of subsidized lumber. The Appellate Body's only finding against the United States was that the Commerce Department should have conducted such a pass-through analysis with respect to the sale of logs from harvester/sawmills to unrelated sawmills.

The DSB adopted the panel and Appellate Body reports on February 17, 2004. The United States stated its intention to implement the DSB recommendations and rulings on March 5, 2004. On December 17, 2004, the United States informed the DSB that Commerce had revised its CVD order, thereby implementing the DSB's recommendations and rulings.

Following a request by Canada, on January 14, 2005, the DSB established an Article 21.5

compliance panel to review the new Commerce determination. On August 1, 2005, the compliance panel issued a report finding deficiencies in Commerce's implementation, and on September 6, the United States appealed that report to the WTO Appellate Body.

Canada also requested authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, in the amount of C$200,000,000. The United States objected to this level, referring the matter to arbitration. The parties agreed to request that the arbitration be suspended pending completion of the compliance proceeding.

11. United States—Sunset reviews of antidumping and countervailing duty orders on certain steel products from the EC (WT/DS262)

On July 25, 2002, the United States received from the EC a request for consultations regarding ITC and Commerce determinations made in sunset reviews of the antidumping and countervailing duty orders on corrosion-resistant steel from France and Germany and the antidumping and countervailing duty orders on cut-to-length steel from Germany. The EC request also concerns certain provisions and procedures contained in the Tariff Act of 1930, Commerce's regulations, and Commerce's so-called Sunset Policy Bulletin. The EC raises several concerns, including the alleged presumption of continued dumping or subsidization where a party waives its participation in a Commerce sunset review; the application of a 0.5 percent *de minimis* standard in antidumping sunset reviews; the criteria for conducting a cumulative injury analysis and the decision of the ITC to use a cumulative analysis; the assessment of the likely volume of imports in a sunset review; and the alleged failure of the ITC to use publicly available information as a substitute for missing information. Consultations were held September 12, 2002.

12. United States—Final dumping determination on softwood lumber from Canada (WT/DS264)

On September 13, 2002, Canada requested consultations regarding the Department of Commerce's amended final determination of sales at less than fair value of certain softwood lumber from Canada, along with the antidumping duty order with respect to imports of the subject products. Canada contests the initiation of the investigation, arguing that the petition did not contain sufficient evidence to justify initiation and that the Byrd Amendment precludes an objective examination of the degree of support for the petition. Canada further asserts that Commerce, in calculating the margin of dumping, made improper comparisons between sales in the home market and sales in the U.S. market. Canada also challenges Commerce's conduct of the investigation, arguing that Commerce failed to issue timely decisions and provide reasonable briefing schedules. Consultations were held October 11, 2002.

Canada requested the establishment of a panel on December 6, 2002, and the DSB established a panel on January 8, 2003. On February 25, 2003, the parties agreed on the panelists, as follows: Mr. Harsha V. Singh, Chairman, and Mr. Gerhard Hannes Welge and Mr. Adrian Makuc, Members. In its report, the panel rejected Canada's arguments: (1) that Commerce's

investigation was improperly initiated; (2) that Commerce had defined the scope of the investigation (*i.e.*, the "product under investigation") too broadly; and (3) that Commerce improperly declined to make certain adjustment based on difference in dimension of products involved in particular transactions compared. The panel also rejected Canada's claims on company-specific calculation issues. The one claim that the panel upheld was Canada's argument that Commerce's use of "zeroing" in comparing U.S. price to normal value was inconsistent with Article 2.4.2 of the Antidumping Agreement.

On May 13, 2004, the United States filed a notice of appeal regarding the "zeroing" issue. Canada cross-appealed with respect to two company-specific issues (one regarding the allocation of costs to Abitibi, and the other regarding the valuation of an offset to cost of production for Tembec). The Appellate Body issued its report on August 11, 2004. The report upheld the panel's findings on "zeroing" and the Tembec issue. It reversed a panel finding regarding the Abitibi issue concerning interpretation of the term "consider all available evidence" in Article 2.2.1.1 of the AD Agreement; however, it declined to complete the panel's legal analysis. The panel and Appellate Body reports were adopted at the August 31, 2004 DSB meeting. The United States and Canada agreed that the reasonable period of time for implementation in this dispute would expire on April 15, 2005. On February 14, 205, by mutual agreement between the United States and Canada, the reasonable period of time was extended to May 2, 2005.

On May 2, 2005, Commerce issued a revised antidumping determination in which it established the existence of dumping using the transaction-to-transaction comparison methodology, rather than the average-to-average methodology. On May 19, 2005, Canada challenged the measure taken to comply under Article 21.5 of the DSU. Also on that date, Canada sought recourse to Article 22.2 of the DSU. On May 31, 2005, the United States objected to the level of suspension of concessions proposed by Canada pursuant to Article 22.2 and, accordingly, the matter was referred to arbitration under Article 22.6 of the DSU. On June 10, 2005, the United States and Canada jointly asked that the Article 22.6 arbitration be suspended pending conclusion of the Article 21.5 proceeding.

The DSB established an Article 21.5 panel on June 1, 2005. The panel was composed on June 3, 2005, consisting of the same members as the original panel. On August 26, 2005, the Director General appointed Dr. Toufiq Ali to serve as replacement panel chairman for Mr. Singh, who had been appointed to serve as Deputy Director General of the WTO.

13. United States—Subsidies on upland cotton (WT/DS267)

On September 27, 2002, the United States received from Brazil a request for consultations pursuant to Articles 4.1, 7.1 and 30 of the *Agreement on Subsidies and Countervailing Measures*, Article 19 of the *Agreement on Agriculture*, Article XXII of the *General Agreement on Tariffs and Trade 1994*, and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*. The Brazilian letter requests consultations pertaining to "prohibited and actionable subsidies provided to U.S. producers, users and/or exporters of upland cotton, as well

as legislation, regulations, statutory instruments and amendments thereto providing such subsidies (including export credits), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton [footnote omitted]." Brazil claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the *Agreement on Subsidies and Countervailing Measures*, the *Agreement on Agriculture*, and the *General Agreement on Tariffs and Trade 1994*. Consultations were held December 3-4, 2002. A second round of consultations was held January 17, 2003. Brazil requested the establishment of a panel on February 6, 2003. The DSB established a panel on March 18, 2003. The Director General composed the panel as follows: Mr. Dariusz Rosati, Chairman, and Mr. Mario Matus and Mr. Daniel Moulis, Members.

On September 8, 2004, the panel circulated its report to all WTO Members and the public. The panel made some findings in favor of Brazil on certain of its claims and other findings in favor of the United States:

- The panel found that the "Peace Clause" in the WTO Agreement on Agriculture did not apply to a number of U.S. measures, including (1) domestic support measures and (2) export credit guarantees for "unscheduled commodities" and rice (a "scheduled commodity"). Therefore, Brazil could proceed with certain of its challenges.

- The panel found that export credit guarantees for "unscheduled commodities" (such as cotton and soybeans) and for rice are prohibited export subsidies. However, the panel also found that Brazil had not demonstrated that the guarantees for other "scheduled commodities" exceeded U.S. WTO reduction commitments and therefore breached the Peace Clause. Further, Brazil had not demonstrated that the programs threaten to lead to circumvention of U.S. WTO reduction commitments for other "scheduled commodities" and for "unscheduled commodities" not currently receiving guarantees.

- Some U.S. domestic support programs (i.e., marketing loan, counter-cyclical, market loss assistance, and Step 2 payments) were found to cause significant suppression of cotton prices in the world market in marketing years 1999-2002 causing serious prejudice to Brazil's interests. However, the panel found that other U.S. domestic support programs (i.e., production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to show that these programs caused significant price suppression. The panel also found that Brazil failed to show that any U.S. program caused an increase in U.S. world market share for upland cotton constituting serious prejudice.

- The panel did not reach Brazil's claim that U.S. domestic support programs threatened to cause serious prejudice to Brazil's interests in marketing years 2003-2007. The panel also did not reach Brazil's claim that U.S. domestic support programs *per se* cause serious prejudice in those years.

- The panel also found that Brazil had failed to establish that FSC/ETI tax benefits for cotton exporters were prohibited export subsidies.

- Finally, the panel found that Step 2 payments to exporters of cotton are prohibited export subsidies, not protected by the Peace Clause, and Step 2 payments to domestic users are prohibited import substitution subsidies because they were only made for U.S. cotton.

On October 18, 2004, the United States filed a notice of appeal with the Appellate Body; Brazil then cross-appealed. The Appellate Body circulated its report on March 3, 2005. The Appellate Body upheld the panel's findings appealed by the United States. The Appellate Body also rejected or declined to rule on most of Brazil's appeal issues. On March 21, 2005, the DSB adopted the panel and Appellate Body reports and, on April 20, 2005, the United States advised the DSB that it intends to bring its measures into compliance.

On June 30, 2005, the United States announced certain administrative changes relating to its export credit guarantee programs. Further, on July 5, the United States proposed legislation relating to the export credit guarantee and Step 2 programs. On July 5, 2005, Brazil requested authorization to impose countermeasures and suspend concessions in the amount of $3 billion. On July 14, 2005, the United States objected to the request, thereby referring the matter to arbitration. On August 17, 2005, The United States and Brazil agreed to suspend the arbitration. On October 6, 2005, Brazil made a separate request for authorization to impose countermeasures and suspend concessions in the amount of $1.04 billion per year in connection with the "serious prejudice" findings. The United States objected to Brazil's request on October 17, 2005, and that matter was also referred to arbitration.

14. United States—Sunset review of anti-dumping measures on oil country tubular goods from Argentina (WT/DS268)

On October 7, 2002, Argentina requested consultations regarding DOC and ITC determinations in the sunset review of the antidumping duty order on oil country tubular goods from Argentina, as well as the DOC's determination to continue the order. Argentina also identifies as measures sections 751(c) and 752 of the Tariff Act of 1930, the URAA Statement of Administrative Action, the sunset review regulations of the DOC and the ITC, and the DOC Sunset Policy Bulletin. The specific concerns raised by Argentina are: (1) the DOC's evidentiary standard for initiating a sunset review; (2) the DOC's use of a 0.5 percent *de minimis* standard, as opposed to the 2 percent standard for investigations; (3) the DOC's application of the "likelihood" standard; (4) the U.S. standard for determining whether continued or recurring injury is "likely"; (5) the alleged failure by the ITC to conduct an "objective examination"; and (6) the statutory provisions addressing the time period within which the ITC is to assess the likelihood of continued or recurring injury. Argentina alleges violations of various provisions of the Antidumping Agreement, GATT 1994 and Article XVI:4 of the WTO Agreement. Consultations were held November 14, 2002.

Argentina requested the establishment of a panel on April 3, 2003. The DSB established a panel on May 19, 2003. On September 4, 2003, the Director General composed the panel as follows: Mr. Paul O'Connor, Chairman, and Mr. Bruce Cullen and Mr. Faizullah Khilji, Members. In its report circulated July 16, 2004, the panel agreed with Argentina that the waiver provisions prevent the DOC from making a determination as required by Article 11.3 and that the DOC's Sunset Policy Bulletin is inconsistent with Article 11.3. The panel rejected Argentina's claims that the ITC did not correctly apply the "likely" standard and did not conduct an objective examination. Further, the panel concluded that statutes providing for cumulation and the time-frame for continuation or recurrence of injury were not inconsistent with Article 11.3.

On August 31, 2004, the United States filed a notice of appeal. The Appellate Body issued its report on November 29, 2004. The Appellate Body reversed the panel's finding against the Sunset Policy Bulletin and upheld the other findings described above. The DSB adopted the panel and Appellate Body reports on December 17, 2004.

Argentina requested arbitration in order to determine the reasonable period of time for the United States to implement the recommendations and rulings of the DSB. The arbitrator awarded the United States 12 months, until December 17, 2005. On August 15, 2005, Commerce published proposed regulations to implement the finding that the waiver provisions were inconsistent with Article 11.3. Commerce published the final regulations on October 28, 2005, effective October 31, 2005. Commerce has also begun the process of redetermining whether dumping is likely to continue or recur if the order is revoked.

15. United States—Investigation of the International Trade Commission in softwood lumber from Canada (WT/DS277)

On December 20, 2002, Canada requested consultations with the United States on the USITC's final determination in its investigations concerning softwood lumber from Canada. The Commission determined that an industry in the United States is threatened with material injury by reason of imports from Canada found to be subsidized and sold in the United States at less than fair value. Canada alleges four flaws in the ITC's determination: (1) basing threat determination on "allegation, conjecture, and remote possibility"; (2) failing to establish that circumstances that would covert threatened injury into actual injury are "clearly foreseen and imminent"; (3) "failing to properly consider all factors relevant to determining the existence of a threat of material injury"; and (4) failing to properly consider the impact of dumped and subsidized imports on the domestic industry. More generally, Canada alleges that the ITC's report lacked "sufficient detail, relevant information and considerations, and proper reasons." Consultations were held January 22, 2003.

Canada requested the establishment of a panel on April 3, 2003, and the DSB established a panel on May 7, 2003. On June 19, 2003, the Director General composed the panel as follows: Mr. Hardeep Singh Puri, Chairman, and Mr. Paul O'Connor and Ms. Luz Elena Reyes De La Torre, Members. In its report circulated on March 22, 2004, the panel agreed with Canada's principal

argument was that the ITC's threat of injury determination was not supported by a reasoned and adequate explanation, and agreed with Canada that the ITC had failed to establish that imports threaten to cause injury. However, the panel: declined Canada's request to find violations of certain overarching obligations under the Antidumping and Subsidies Agreements; rejected Canada's argument that a requirement that an investigating authority take "special care" is a stand-alone obligation; rejected Canada's argument that the ITC was obligated to identify an abrupt change in circumstances; agreed with the United States that, where the Antidumping and Subsidies Agreements required the ITC to "consider" certain factors, the ITC was not required to make explicit findings with respect to those factors; and rejected Canada's argument that the United States violated certain provisions of the applicable agreements that pertain to present material injury. The DSB adopted the panel report on April 26, 2004.

At the May 19, 2004 meeting of the DSB, the United States stated its intention to implement the rulings and recommendations of the DSB. On November 24, 2004, the ITC issued a new threat-of-injury determination, finding that the U.S. lumber industry was threatened with material injury by reason of dumped and subsidized lumber from Canada. On December 13, Commerce amended the antidumping and countervailing duty orders to reflect the issuance and implementation of the new ITC determination.

At the January 25, 2005 DSB meeting, the United States announced that it had come into compliance with the DSB's recommendations and rulings. Canada sought recourse to Article 21.5 of the DSU, and an Article 21.5 panel was established on February 25, 2005. The panel was composed on March 2, 2005, consisting of the same members as the original panel. Canada also sought recourse to Article 22 of the DSU. The United States objected to the level of concessions that Canada proposed to suspend, and the matter accordingly was referred to arbitration under Article 22.6. The Article 22.6 arbitration was suspended pending the outcome of the Article 21.5 proceeding.

In its report circulated on November 15, 2005, the Article 21.5 panel rejected Canada's claim that the ITC's threat-of-injury determination was not supported by evidence and analysis such that an objective and unbiased investigating authority could have made that determination.

16. United States—Countervailing duties on steel plate from Mexico (WT/DS280)

On January 21, 2003, Mexico requested consultations on an administrative review of a countervailing duty order on carbon steel plate in sheets from Mexico. Mexico alleges that the Department of Commerce used a WTO-inconsistent methodology – the "change-in-ownership" methodology – to determine the existence of countervailable benefits bestowed on a Mexican steel producer. Mexico alleges inconsistency with various articles of the WTO Agreement on Subsidies and Countervailing Measures. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on August 4, 2003, and the DSB established a panel on August 29, 2003.

17. United States—Anti-dumping measures on cement from Mexico (WT/DS281)

On January 31, 2003, Mexico requested consultations regarding a variety of administrative determinations made in connection with the antidumping duty order on gray portland cement and cement clinker from Mexico, including seven administrative review determinations by Commerce, the sunset determinations of Commerce and the ITC, and the ITC's refusal to conduct a changed circumstances review. Mexico also challenges certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. Mexico raises a host of concerns, including case-specific dumping calculation issues; Commerce's practice of zeroing; the analytical standards used by Commerce and the ITC in sunset reviews; the U.S. retrospective system of duty assessment, including the assessment of interest; and the assessment of duties in regional industry cases. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On September 3, 2004, the Director-General composed the panel as follows: Mr. Peter Palecka, Chair, and Mr. Martin Garcia and Mr. David Unterhalter, Members.

18. United States—Anti-dumping measures on oil country tubular goods (OCTG) from Mexico (WT/DS282)

On February 18, 2003, Mexico requested consultations regarding several administrative determinations made in connection with the antidumping duty order on oil country tubular goods from Mexico, including the sunset review determinations of Commerce and the ITC. Mexico also challenges certain provisions and procedures contained in the Tariff Act of 1930, the regulations of Commerce and the ITC, and Commerce's Sunset Policy Bulletin, as well as the URAA Statement of Administrative Action. The focus of this case appears to be on the analytical standards used by Commerce and the ITC in sunset reviews, although Mexico also challenges certain aspects of Commerce's antidumping methodology. Consultations were held April 2-4, 2003. Mexico requested the establishment of a panel on July 29, 2003, and the DSB established a panel on August 29, 2003. On February 11, 2003, the following panelists were selected, with the consent of the parties, to review Mexico's claims: Mr. Christer Manhusen, Chairman; Mr. Alistair James Stewart and Ms. Stephanie Sin Far Man, Members.

On June 20, 2005, the panel circulated its report. The panel rejected Mexico's claim that certain aspects of the U.S. administrative review procedures are inconsistent with U.S. WTO obligations, as well as Mexico's claims regarding the USITC's laws and regulations regarding the determination of likelihood of injury and the likelihood determination itself. The panel did find that the Sunset Policy Bulletin and Commerce's likelihood determination itself were inconsistent with Article 11.3.

On August 4, 2005, Mexico filed a notice of appeal regarding the panel's findings on likelihood of injury. The United States appealed the panel's findings regarding the Sunset Policy Bulletin.

On November 2, 2005, the Appellate Body issued its report. The report upheld the panel's findings rejecting Mexico's claims regarding likelihood of injury. In addition, the Appellate Body reversed the panel's findings that the Sunset Policy Bulletin breaches U.S. obligations.

19. United States—Measures affecting the cross-border supply of gambling and betting services (WT/DS285)

On March 13, 2003, the United States received from Antigua & Barbuda a request for consultations regarding its claim that U.S. federal, state and territorial laws on gambling violate U.S. specific commitments under the GATS, as well as Articles VI, XI, XVI, and XVII of the GATS, to the extent that such laws prevent or can prevent operators from Antigua and Barbuda from lawfully offering gambling and betting services in the United States. Antigua & Barbuda revised its request for consultations on April 1, 2003. Consultations were held on April 30, 2003.

Antigua & Barbuda requested the establishment of a panel on June 12, 2003. The DSB established a panel on July 21, 2003. On August 25, 2003, the Director General composed the panel as follows: Mr. B. K. Zutshi, Chairman, and Mr. Virachai Plasai and Mr. Richard Plender, Members. The panel's final report, circulated on November 10, 2004, found that the United States breached Article XVI (Market Access) of the GATS by maintaining three U.S. federal laws (18 U.S.C. §§ 1084, 1952, and1955) and certain statutes of Louisiana, Massachusetts, South Dakota, and Utah. It also found that these measures were not justified under exceptions in Article XIV of the GATS.

The United States filed a notice of appeal on January 7, 2005. The Appellate Body issued its report on April 7, 2005, in which it reversed and/or modified several panel findings. The Appellate Body found that the three U.S. federal gambling laws at issue "fall within the scope of 'public morals' and/or 'public order'" under Article XIV. To meet the requirements of the Article XIV chapeau, the Appellate Body found that the United States needs to clarify an issue concerning Internet gambling on horse racing.

The DSB adopted the panel and Appellate Body reports on April 20, 2005. The United States stated its intention to implement the DSB recommendations and rulings on May 19, 2005. On August 19, 2005, an Article 21.3(c) arbitrator determined that the reasonable period of time for implementation will expire on April 3, 2006.

20. United States—Laws, regulations and methodology for calculating dumping margins ("zeroing") (WT/DS294)

On June 12, 2003, the European Communities requested consultations regarding the use of "zeroing" in the calculation of dumping margins. Consultations were held July 17, 2003. The EC requested further consultations on September 8, 2003. Consultations were held October 6, 2003. The EC requested the establishment of a panel on February 5, 2004, and the DSB

established a panel on March 19, 2004. On October 27, 2004, the panel was composed as follows: Mr. Crawford Falconer, Chair, and Mr. Hans-Friedrich Beseler and Mr. William Davey, Members. The panel issued its report on October 31, 2005, finding that Commerce's use of "zeroing" in antidumping investigations is inconsistent with U.S. obligations, but rejecting the EC's claims that zeroing in other phases of antidumping proceedings is also inconsistent.

21. United States—Countervailing duty investigation on dynamic random access memory semiconductors (DRAMS) from Korea (WT/DS296)

On June 30, 2003, Korea requested consultations regarding determinations made in the countervailing duty investigation on DRAMS from Korea, and related laws and regulations. Consultations were held August 20, 2003. Korea requested further consultations on August 18, 2003, which were held October 1, 2003. Korea requested the establishment of a panel on November 19, 2003. The panel request covered only the Commerce and ITC determinations made in the DRAMS investigation. The DSB established a panel on January 23, 2004. On March 5, 2004, the Director General composed the panel as follows: H. E. Mr. Hardeep Puri, Chair, and Mr. John Adank and Mr. Michael Mulgrew, Members. On February 21, 2005, the panel found that certain aspects of the Commerce and ITC determinations were inconsistent with provisions of the SCM Agreement.

On March 29, 2005, the United States appealed the portion of the panel report dealing with the Commerce determination. On June 27, the Appellate Body issued its report in which it reversed the findings of the panel. The DSB adopted the Appellate Body report and the panel report (as modified by the Appellate Body) on July 20. On August 3, the United States informed the DSB of its intent to implement the panel's adverse finding regarding the ITC determination.

22. United States—Determination of the International Trade Commission in hard red spring wheat from Canada (WT/DS310)

On April 8, 2004, Canada requested consultations regarding the U.S. International Trade Commission's determination on hard red spring wheat. In its request, Canada alleged that the United States has violated Article VI:6(a) of the GATT 1994 and various articles of the Anti-dumping Agreement and the SCM Agreement. Canada alleged that these violations stemmed from certain errors in the ITC's determination. In particular, Canada claims that the ITC: (1) failed "to properly examine the effect of the dumped and subsidized imports on prices in the domestic market for like products;" (2) failed "to properly examine the impact of the dumped and subsidized imports on domestic producers of like products;" (3) failed "to properly demonstrate a causal relationship between the dumped and subsidized imports and material injury to the domestic industry;" (4) failed "to properly examine known factors other than dumping and subsidizing that were injuring the domestic industry;" and (5) attributed to the dumped and subsidized imports the injuries caused by other factors. Consultations were held on May 6, 2004. On June 11, 2004, Canada requested the establishment of a panel, the United States objected, and Canada made but withdrew a second panel request.

23. United States—Reviews of countervailing duty on softwood lumber from Canada (WT/DS311)

On April 14, 2004, Canada requested consultations concerning what it termed "the failure of the United States Department of Commerce (Commerce) to complete expedited reviews of the countervailing duty order concerning certain softwood lumber products from Canada" and "the refusal and failure of Commerce to conduct company-specific administrative reviews of the same countervailing duty order." Canada alleged that the United States had acted inconsistently with several provisions of the SCM Agreement and with Article VI:3 of the GATT 1994. Consultations were held on June 8, 2004.

24. United States–-Subsidies on large civil aircraft (WT/DS317)

On October 6, 2004, the European Communities requested consultations with respect to "prohibited and actionable subsidies provided to U.S. producers of large civil aircraft." The EC alleged that such subsidies violated several provisions of the SCM Agreement, as well as Article III:4 of the GATT. Consultations were held on November 5, 2004. On January 11, 2005, the United States and the EU agreed to a framework for the negotiation of a new agreement to end subsidies for large civil aircraft. The parties set a three-month time frame for the negotiations and agreed that, during negotiations, they would not request panel proceedings. These discussions did not produce an agreement. On May 31, 2005, the EC requested the establishment of a panel to consider its claims. The EC filed a second request for consultations regarding large civil aircraft subsidies on June 27, 2005. This request covered many of the measures covered in the initial consultations, as well as many additional measures that were not covered. A panel was established with regard to the October claims on July 20, 2005. On October 17, 2005, the Deputy Director General established the panel as follows: Ms. Marta Lucía Ramírez de Rincón, Chair, and Ms. Gloria Peña and Mr. David Unterhalter, Members.

25. United States - Section 776 of the Tariff Act of 1930 (WT/DS319)

On November 5, 2004, the European Communities requested consultations with the United States with respect to the "facts available" provision of the U.S. dumping statute and the Department of Commerce's dumping order on Stainless Steel Bar from the United Kingdom. The EC claims that both the statutory provision on adverse facts available and Commerce's determination and order are inconsistent with various provisions of the Antidumping Agreement and the GATT 1994. Consultations were held on January 11, 2005 and May 20, 2005.

26. United States - Continued suspension of obligations in the EC - Hormones dispute (WT/DS320)

On November 8, 2004, the European Communities requested consultations with respect to "the United States' continued suspension of concessions and other obligations under the covered agreements" in the *EC – Hormones* dispute. Consultations were held on December 16, 2004.

The EC requested the establishment of a panel on January 13, 2005, and the panel was established on February 17, 2005. Australia, Canada, China, Mexico, and Chinese Taipei reserved their third-party rights. On June 6, 2005, the Director General composed the panel as follows: Mr. Mr Tae-yul Cho, Chairman, and Ms. Claudia Orozco and Mr. William Ehlers, Members. The panel, in a communication dated August 1, 2005, granted the parties' request to open the substantive meetings with the parties to the public via a closed-circuit television broadcast. The panel's meeting with third parties remain closed.

27. United States – Measures relating to zeroing and sunset reviews (WT/DS322)

On November 24, 2004, Japan requested consultations with respect to: (1) the Department of Commerce's alleged practice of "zeroing" in antidumping investigations, administrative reviews, sunset reviews, and in assessing the final antidumping duty liability on entries upon liquidation; (2) in sunset reviews of antidumping duty orders, Commerce's alleged irrefutable presumption of the likelihood of continuation or recurrence of dumping in certain factual situations; and (3) in sunset reviews, the waiver provisions of U.S. law. Japan claims that these alleged measures breach various provisions of the AD Agreement and Article VI of the GATT 1994. Consultations were held on December 20, 2004. On April 15, 2005, the Director-General composed the panel as follows: David Unterhalter, Chair, and Simon Farbenbloom and Jose Antonio Buencamino, Members.

28. United States – Provisional antidumping measures on shrimp from Thailand (WT/DS324)

On December 9, 2004, Thailand requested consultations with respect to the Department of Commerce's imposition of provisional antidumping duties on certain frozen and canned warmwater shrimp from Thailand. Specifically, Thailand has alleged that Commerce's use of a "zeroing" methodology is inconsistent with Article 2.4 of the AD Agreement. Thailand also has alleged that Commerce's resort to "adverse facts available" in calculating normal value for one Thai producer violates provisions of Article 6 and Annex II of the AD Agreement; and that Commerce's alleged failure to make due allowances for certain factors in its calculations for the Thai exporters violates Article 2.4 of the AD Agreement.

29. United States – Anti-Dumping Determinations Regarding Stainless Steel from Mexico (WT/DS325)

On January 5, 2005, Mexico requested consultations with respect to the Department of Commerce's alleged use of "zeroing" in an antidumping investigation and three administrative reviews involving certain stainless steel products from Mexico. Mexico claims these alleged measures breach several provisions of the AD Agreement, the GATT 1994 and the WTO Agreement. Consultations were held February 4, 2005.

II. NAFTA - CHAPTER 20

A. Proceedings in which the United States is a plaintiff

No current actions.

B. Proceedings in which the United States is a defendant

1. Mexico—Sugar TRQ

On March 13, 1998, Mexico requested consultations with the United States under NAFTA Chapter 20 concerning the implementation of the U.S. TRQ on sugar. Consultations were held on April 15, 1998. On January 7, 1999, Mexico requested a meeting of the NAFTA Commission on this issue, and the meeting was held on November 17, 1999. Mexico then requested the formation of a Chapter 20 panel on August 18, 2000.

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